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OFFICE OF PETITIONS

In re Application of :
William C. Cortner, Jr. : DECISION ON PETITION TO
Application No. 10/779,916 : WITHDRAW HOLDING OF
Filed: 17 February, 2004 : ABANDONMENT
Attorney Docket No. 506474-0008 :

This is a decision on the renewed petition filed on 14 October, 2005, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the non-final Office action mailed on 13 September, 2004, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 17 May, 2005. The petition filed on 17 June, 2005, was dismissed on 22 September, 2005.

Petitioner asserts that the Office action mailed on 13 September, 2004, was never received.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was

not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the final Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioner has submitted verified statements from the practitioner, J. David Wharton, stating that the Office communication was not received by counsel, and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. Copies of docket records for the above-identified application where the non-received Office action would have been entered had it been received and docketed were attached.

The petitioner has made a sufficient showing of nonreceipt of the non-final Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is GRANTED.

The application file is being referred to Technology Center 3600 technical support staff for remailing of the non-final Office action. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
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